

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOANN MADDREY,

Plaintiff,

v.

No. CV-13-5001-EFS

PROTECTIVE ORDER

QUALICENTERS INLAND NORTHWEST
L.L.C., d/b/a Fresenius Medical
Care, Fresenius Medical Care North
America, Fresenius Medical
Services, and Fresenius Medical
Care Columbia Basin,

Defendant.

IT IS HEREBY ORDERED:

1. Scope and Purpose of this Order: This Confidentiality Agreement and Stipulated Protective Order ("Protective Order") shall govern the designation and handling of protected documents produced in this litigation by any party or non-party, whether by voluntary production or disclosure or in response to any formal discovery or disclosure procedure, including designation and handling of non-public information of a confidential nature. This Protective Order does not affect any party's or non-party's obligations under the Federal Rules of Civil Procedure ("FRCP") or any local Court rules to produce documents as required by the rules of discovery or an order of this Court. The purpose of this Protective Order is to facilitate the handling of non-public information of a confidential or proprietary nature.

2. Standards for Protected Documents; Alternative of Confidentiality Redactions: Any person who is required to produce documents or information in this litigation may designate material

1 produced as protected document(s) pursuant to this Protective Order.
2 All designations must be based on the good faith belief that the
3 information constitutes (a) proprietary or sensitive business,
4 personal, or financial information; or (b) information subject to a
5 legally protected right of privacy, specifically including but not
6 limited to the medical privacy rights of individuals who received
7 medical care from Plaintiff's employer. For purposes of this
8 Protective Order, information constituting "protected health
9 information," as defined under the privacy regulations issued pursuant
10 to the Health Insurance Portability and Accountability Act of 1996
11 ("HIPAA"), 45 C.F.R., parts 160-164, shall be deemed to be
12 confidential information. Such HIPAA-protected information may be
13 redacted by any person from any documents that are produced or
14 disclosed during this litigation, where redaction is a viable
15 alternative available for protecting confidential information without
16 designating an entire document as a protected document.

17 **3. Protected Documents:** Protected document(s) are those
18 documents marked "CONFIDENTIAL" by any party. These documents,
19 referred to hereinafter as "protected documents," will be covered by
20 this Protective Order and will be used only for the purposes of this
21 case, and will not be used by any party or any party's counsel for any
22 purpose unrelated to this case.

23 **4. Designating Protected Documents:**

24 **a. Marking Protected Documents:** Protected documents
25 shall be designated as confidential by affixing to them the legend
26 "CONFIDENTIAL" in a size and location that makes the designation
27 readily apparent, preferably in the lower right hand corner.
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1 **b. Designating Deposition Testimony:** Any party or non-
2 party wishing to designate deposition testimony or deposition exhibits
3 as confidential may do so on the record during the deposition, or
4 within 30 days after receipt of the deposition transcript and exhibits
5 by providing written notice of the designation to the parties and any
6 other affected person. The party making the designation shall be
7 responsible for assuring that those portions of the deposition
8 transcript and exhibits designated as confidential are appropriately
9 marked and bound by the reporter.

10 **c. Subsequent Designation:** A protected document or
11 deposition testimony produced or disclosed without a "CONFIDENTIAL"
12 designation may be subsequently designated by any party as
13 confidential. In each such case, the designating person shall provide
14 to all other parties written notice of that designation and with a
15 copy of the document marked as "CONFIDENTIAL." No person shall be
16 liable for publicly disclosing a document marked "CONFIDENTIAL" if
17 that disclosure occurred before receiving written notice pursuant to
18 this paragraph.

19 **5. Maintaining Designated Protected Documents:** Any protected
20 document must be maintained in a manner reasonably calculated to
21 preserve its confidentiality.

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24 **6. Disclosure of Protected Documents:**

25 **a.** Except as provided herein, or by any subsequent Court
26 order, no protected documents shall be delivered, exhibited, or
27 disclosed to any persons unless done in a manner that complies with
28 this Protective Order.

1 **b.** The parties' counsel shall require all persons, except
2 those listed below in paragraph 6(c), to read and agree to be bound by
3 this Protective Order by endorsing the certification attached as
4 Exhibit A before any such persons are given access to any protected
5 document. Counsel shall retain these certifications.

6 **c.** Protected documents may be delivered, exhibited or
7 disclosed to the following persons, subject to the limitations of this
8 Protective Order without those persons being required to sign the
9 certification attached as Exhibit A, to:

10 (i) Counsel representing the named parties in this
11 case and any paralegal, clerical or other
12 employees of such counsel assisting in the
13 prosecution or defense of this litigation;

14 (ii) Any copying or similar services hired by counsel
15 to copy or reproduce documents in bulk;

16 (iii) The Court or any of the Court's personnel;

17 (iv) Any person testifying or attending a deposition;

18 (v) Any person identified as having authored or
19 having received the protected document(s) before
20 this litigation arose; and

21 (vi) The parties and their client representatives, for
22 any purpose in this litigation.

23 **d.** This Protective Order does not apply to information
24 obtained by or made available to any person by means other than the
25 discovery provisions of the FRCP.

26 **7. Producing Party's Use of Protected Documents:** Nothing in
27 this Protective Order limits a producing party's use of its own
28 documents or any documents obtained through means other than discovery

1 requests or subpoenas in this litigation. Such use shall not affect
2 any "CONFIDENTIAL" designation made under the terms of this Protective
3 Order.

4 **8. Disputes as to Confidentiality Designation:**

5 **a. Meet and Confer Requirement:** If, at any time, a party
6 disagrees with the designation of a protected document, the parties
7 must first attempt to resolve the dispute by conferring.

8 **b. Protective Order:** If the dispute is not resolved
9 through the meet-and-confer process, then, after receiving party's
10 written notification to the producing party of its disagreement with
11 the confidentiality designation, the producing party will have 30 days
12 to move the Court for protection under the FRCP and this Court's local
13 rules. The parties may, however, agree to extend this period so as to
14 bring any disputes about designations of protected documents to the
15 Court either at one time or as efficiently as possible.

16 **c. Status Pending Resolution of Dispute:** Any disputed
17 document or deposition testimony or other material must be treated as
18 a protected document under this Protective Order until entry of a
19 Court order ruling otherwise.

20 **9. Rights of Parties:** This Protective Order is without
21 prejudice to the right of any party to apply to the Court for any
22 further protective order relating to any confidential information or
23 documents, or for an order permitting disclosure of any confidential
24 information or documents beyond the terms of this Protective Order.

25 **10. Non-waiver of Privilege for Inadvertently Disclosed**
26 **Materials:** Pursuant to Federal Rule of Evidence 502, the inadvertent
27 disclosure of any document that is subject to a legitimate claim of
28 attorney-client privilege or work product protection shall not waive the

1 privilege or protection either for that document or for the subject
2 matter of that document.

3 **11. Return of Inadvertently Disclosed Materials:** Unless the
4 requesting party disputes the claim of attorney-client privilege or work
5 product protection, any document(s)the producing party deems to have
6 been inadvertently disclosed, and to be subject to such a privilege or
7 protection, shall upon written request, promptly be returned to the
8 producing party or destroyed, at that party's option. If the claim is
9 disputed, a single copy of the materials may be retained by the
10 requesting party for the exclusive purpose of seeking judicial
11 determination of the matter by this Court pursuant to FRCP 26(b)(5)(B)
12 and Federal Rule of Evidence 502.

13 **12. Documents for Trial:** As part of the parties' efforts to
14 file a stipulated pretrial order in accordance with this Court's LR
15 16.1(b), the parties will confer with the aim of reaching an agreement
16 about a method for maintaining the confidentiality of private
17 information and protected documents at trial. At the producing
18 party's request, any document previously designated "CONFIDENTIAL"
19 must be used at trial only in a clean or redacted copy without any
20 such designation.

21 **13. Upon Case Completion:** Within 60 days after termination of
22 this lawsuit, whether this occurs by agreement of the parties or by
23 the passage of time beyond the last day for final appeal, a producing
24 party may request the return or destruction of all protected documents
25 produced in this litigation, except those filed with the Court or
26 agreed by the parties to be retained for purposes of effectuating any
27 judgment. Upon such a written request from a producing party, the
28 recipient will have 60 days in which to: (a) return the subject

1 documents, (b) certify that the subject documents have been destroyed,
2 with supporting details, or (c) file a motion with the Court seeking
3 an order for good cause shown that the subject documents should not be
4 returned or destroyed. Even if there is no request under this
5 paragraph to return or destroy the documents, the protected documents
6 are still subject to this Protective Order.

7 **14. Binding Confidentiality Agreement:** The parties and their
8 counsel agree to abide by the terms of this Protective Order as
9 contractual commitments between them once this Protective Order has
10 been signed by their respective counsel, and regardless of when or
11 whether this Protective Order is entered by the Court.

12 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
13 Order and provide copies to all counsel.

14 **DATED** this 12th day of March 2013.

15 s/ Edward F. Shea
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EDWARD F. SHEA
17 Senior United States District Judge
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Exhibit A

I, _____, certify that I have received and read a copy of the Stipulated Protective Order in *Maddrey v. QualiCenters Inland Northwest L.L.C.*, No. CV-13-5001-EFS (E.D. Wash). I agree to be bound by this Protective Order. I further understand that any protected document and any notes, memoranda or other form of information derived from it, may not be used, copied or disclosed by me to anyone else except in strict accordance with the Stipulated Protective Order and then only for the prosecution and defense of this litigation.

Dated this ____ day of _____, 2013, at _____, Washington.

(Printed Name)